

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:09-CV-646**

HOWARD L. KASTEL TRUSTEE  
of the HOWARD L. KASTEL  
TRUST DATED NOVEMBER 13, 1985 and  
JOAN H. KASTEL,

Plaintiffs,

v.

NUVEEN INVESTMENTS, INC, ROBERT P.  
BREMNER, MESIROW FINANCIAL INC.,  
DUETSCHKE BANK AG, MERRILL LYNCH &  
CO., INC. and CITIGROUP GLOBAL  
MARKETS,

Defendants.

---

**MERRILL LYNCH’S MEMORANDUM OF LAW IN SUPPORT  
OF ITS MOTION TO LIFT THE STAY OF ALL PROCEEDINGS PENDING  
THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION’S RULING ON  
THE TRANSFER OF THIS CASE TO MDL 2030 AS A TAG-ALONG ACTION**

---

Merrill Lynch and Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively, “**Merrill Lynch**”), through its undersigned counsel, hereby respectfully requests that the Court lift the stay of all proceedings in this action pending transfer of this action by the Judicial Panel on Multidistrict Litigation (“JPML”) to the United States District Court for the Southern District of New York for consolidated proceedings in MDL 2030, *In re Merrill Lynch & Co., Inc. - Auction Rate Securities (ARS) Marketing Litigation*. In support of this motion, Merrill Lynch submits the following information to the Court:

1. On November 9, 2009, CitiGroup Global Markets, Inc. and Merrill Lynch & Co., Inc. filed their Motion To Stay All Proceedings Pending The Judicial Panel On Multidistrict Litigation's Ruling On The Transfer Of This Case To MDL 2030 As A Tag-Along Action. (DE# 13).

2. On November 13, 2009, the JPML ruled that this lawsuit is not eligible for consolidation with MDL 2030 as a tag-along action. (*See* Judicial Panel On Multidistrict Litigation - Civil Action Report, attached as Exhibit "1" hereto).

**WHEREFORE**, Merrill Lynch respectfully requests that the Court lift the stay of these proceedings.

Respectfully submitted,

Carl Burkhalter, Esq.  
[CBurkhalter@maynardcooper.com](mailto:CBurkhalter@maynardcooper.com)  
**MAYNARD COOPER & GALE PC**  
1901 6th Avenue North, Suite  
2400  
Birmingham, Alabama 35203  
(205) 254-1000  
(205) 254-1999 ~ Fax

By: /s/ Dana C. Lumsden  
Dana C. Lumsden, Esq. [N.C. Bar No. 32497]  
[dlumsden@hunton.com](mailto:dlumsden@hunton.com)  
**HUNTON & WILLIAMS LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 3500  
Charlotte, NC 28280  
(704) 378-4700  
(704) 378-4890 ~ Fax

ATTORNEYS for DEFENDANTS  
MERRILL LYNCH & CO. INC. and  
CITIGROUP GLOBAL MARKETS

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of June, 2010, I caused a true and correct copy of the **MERRILL LYNCH & CO., INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO LIFY THE STAY ALL PROCEEDINGS PENDING THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION'S RULING ON THE TRANSFER OF THIS CASE TO MDL 2030 AS A TAG-ALONG ACTION**, to be electronically filed with the clerk of the court for the United States District Court for the Middle District of North Carolina and to be served on all of the parties using the CM/ECF System:

\_\_\_\_\_  
/s/ Dana C. Lumsden

Dana C. Lumsden, Esq.